107TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 107–198

APPROVAL OF THE EXTENSION OF NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE PRODUCTS OF THE SOCIALIST REPUBLIC OF VIETNAM

SEPTEMBER 5, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.J. Res. 51]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 51) approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

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I. INTRODUCTION

A. Purpose and Summary

House Joint Resolution 51 would approve the extension of nondiscriminatory treatment with respect to the products of Vietnam through approval of the bilateral trade agreement between the United States and Vietnam.

B. Background

Vietnam's trade status is subject to the "Jackson-Vanik" provisions in Title IV of the Trade Act of 1974 (the Act). This provision of law governs the extension of normal trade relations (NTR), including NTR tariff treatment, and access to U.S. Government credits, or credit or investment guarantees, to nonmarket economy countries ineligible for NTR treatment as of the enactment of the Act. A country subject to the provision may gain eligibility for U.S. trade financing programs by complying with the freedom of emigration provisions under the Act, or by receiving a Presidential waiver of such requirements. The extension of NTR tariff treatment also requires the conclusion and approval by Congress of a bilateral commercial agreement with the United States providing for reciprocal nondiscriminatory treatment.

Since the early 1990s, the United States has taken gradual steps to improve relations with Vietnam. On February 3, 1994, the President lifted the trade embargo on Vietnam in recognition of the cooperation received from the Government of Vietnam in Prisoner of War/Missing in Action (POW/MIA) accounting. On July 11, 1995, the President announced the establishment of diplomatic relations. On March 9, 1998, the President first determined that a Jackson-Vanik waiver for Vietnam would substantially promote the freedom of emigration objectives under the Act. On April 7, 1998, the President issued Executive Order 13079, under which the waiver entered into force. The President has renewed Vietnam's waiver every year since 1998, most recently on June 1, 2001 (H. Doc. 107–82).

U.S.-Vietnam Bilateral Trade Agreement

In 1997, the United States began negotiations with Vietnam toward the conclusion of a U.S.-Vietnam bilateral trade agreement (BTA). That agreement was signed by U.S. Trade Representative Charlene Barshefsky and Vietnam's Trade Minister Vu Khoan on July 13, 2000. On June 8, 2001, President Bush transmitted the agreement to Congress for its approval.

The BTA is the most comprehensive trade agreement ever negotiated with a non-market economy country. It covers most major trade issues and should help bring about over time significant reforms in Vietnam's trade and economic policies. Overall, the BTA commits Vietnam to open its goods and services markets, implement significant economic reforms, expand rule of law, and broaden economic freedom.

The agreement contains five major sections:

(1) *Market access for industrial and agricultural goods:* Vietnam has agreed to sharply lower tariffs; phase out all non-tariff measures; and adhere to WTO standards in applying customs, import licensing, state trading, technical standards, and sanitary and

phytosanitary measures. In addition, Vietnam has agreed to allow all Vietnamese firms, and over time U.S. firms, the right to import and export freely from its borders.

(2) *Intellectual property rights (IPR):* Vietnam has committed to adopt WTO standards for IPR protection within 18 months and to take further measures in several other areas (e.g., protection of satellite signals).

(3) *Market access for services:* Vietnam has agreed to allow U.S. firms over time (typically three to five years) to enter its services market in the full range of service areas, including financial services (insurance and banking), telecommunications, distribution, audio visual, legal, accounting, engineering, computer and related services, market research, construction, educational, health and related services, and tourism.

(4) *Investment provisions:* Vietnam has committed to protect U.S. investments from expropriation, to eliminate local content and export performance requirements, and to phase out its investment licensing regime in many sectors.

(5) *Transparency provisions:* Vietnam has agreed to adopt a fully transparent regime by issuing draft laws, regulations and other rules for comment, ensuring that advance public notice is given for all such laws and regulations, and publishing these documents. Vietnam will also allow U.S. citizens the right to appeal rulings made with respect to all such relevant laws and regulations.

Trade with Vietnam

Vietnam is the world's 13th most populous country, with nearly 80 million people. While the country has emerged as one of Southeast Asia's more promising economies and could become a strong trading partner for the United States, its full potential has yet to be realized. Cumulative foreign direct investment by U.S. companies in Vietnam is low, valued about $1 billion, making the United States the ninth-largest source of investment in Vietnam.

After the President ordered an end to the U.S. trade embargo in 1994, two-way trade between the United States and Vietnam increased steadily from $223 million in 1994 to $935 million in 1996. In part, this rapid growth was due to a large number of U.S. aircraft sales to Vietnam in 1996. Despite a dampening effect on trade as a result of the Asian financial crisis which began in 1997, two-way trade was still $666 million that year. Beginning in 1998, two-way trade began to increase again and reached $828 million in 1998, $880 million in 1999, and $1.16 billion in 2000. Last year, U.S. exports to Vietnam totaled $331 million, while U.S. imports in return were valued at $827 million. Between 1994 and 2000, total trade between the United States and Vietnam increased by 420 percent.

Top U.S. exports to Vietnam include aircraft, industrial and office machinery, footwear parts, telecommunications equipment, and fertilizer. Major U.S. imports from Vietnam include shrimp, footwear, coffee, petroleum products, and cashews.

C. Legislative History

Committee action

On June 8, 2001, the President transmitted the BTA between the United States and Vietnam to Congress. House Joint Resolution 51 was then introduced on June 12, 2001, by Mr. Armey (for himself, Mr. Gephardt, and Mr. Crane) (all by request) to approve the extension of nondiscriminatory treatment with respect to the products of Vietnam. The resolution was referred to the Committee on Ways and Means. On July 26, 2001, the Committee on Ways and Means ordered House Joint Resolution 51 reported favorably without amendment to the House of Representatives by a voice vote with a quorum present.

Legislative hearing

During Committee consideration of the legislation, the Administration presented its views about the importance of Congressional approval of the BTA and responded to Member questions.

II. EXPLANATION OF THE RESOLUTION

Present law

Vietnam's trade status is subject to the "Jackson-Vanik" provisions in the Trade Act of 1974 (the Act). This provision of law governs the extension of normal trade relations (NTR), including NTR tariff treatment, and access to U.S. Government credits, credit guarantees, or investment guarantees, to nonmarket economy countries ineligible for NTR treatment as of the enactment of the Act.

In order to receive NTR tariff treatment, a country subject to Jackson-Vanik must meet two requirements. First, a country must either comply with the freedom of emigration requirements under the Act, or receive an annual waiver of such requirements by the President. On June 1, 2001, the President issued a 12-month renewal of the waiver for Vietnam for the period July 3, 2001 through July 2, 2002. On June 21, 2001, H.J. Res. 55 was introduced by Mr. Rohrabacher, which would have disapproved the President's waiver with respect to Vietnam. On July 26, 2001, the House of Representatives rejected H.J. Res. 55 by a vote of 91 to 324.

Second, the extension of NTR tariff treatment also requires the conclusion and approval by Congress of a bilateral trade agreement (BTA) with the United States providing for reciprocal nondiscriminatory treatment. Without a BTA, a country is only eligible for access to U.S. trade financing programs. A BTA was signed by the United States and Vietnam on July 13, 2000. On June 8, 2001, the President formally transmitted the BTA, including related annexes and exchanges of letters, to the Congress for its consideration, along with his proclamation extending nondiscriminatory treatment to imports from Vietnam. On June 12, 2001, H.J. Res. 51 was introduced by request (as required by the Act). The resolution would extend nondiscriminatory treatment to the products of Vietnam and approve the BTA.

Under section 405(c) of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (P.L. 101–382), the trade agreement and proclamation, and consequently normal trade relations, may take effect only if a joint resolution approving the agreement is enacted into law.

Section 405(b) of the Trade Act of 1974 requires that a bilateral commercial agreement with a Jackson-Vanik country:

(1) be limited to an initial 3-year period;

(2) be subject to suspension or termination for national security reasons;

(3) include safeguard provisions, allowing the United States to put measures in place to prevent market disruption;

(4) provide rights to U.S. patent and trademark holders not less than those provided for in the Paris Convention for the Protection of Industrial Property;

(5) provide rights to U.S. copyright holders not less than the rights provided for in the Universal Copyright Convention;

(6) provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) provide for promotion of trade (including, e.g., facilitation of trade fairs and activities of governmental commercial officers);

(9) provide for consultations on operation of the agreement; and

(10) provide for such other arrangements of a commercial nature as will promote the purpose of the Act.

An agreement may be renewable for additional periods, each not to exceed 3 years, and would be extended automatically unless renounced by either party. Each extension would require a presidential determination that Vietnam is satisfactorily extending reciprocal NTR treatment to U.S. exports.

Explanation of resolution

H.J. Res. 51 states that Congress approves the extension of nondiscriminatory treatment with respect to the products of Vietnam. The effect of this resolution would be Congressional approval of the U.S.-Vietnam BTA, which would grant temporary NTR treatment to Vietnam, subject to an annual review by the President (similar to the process for China prior to its accession to the World Trade Organization).

Reasons for Committee action

The Committee on Ways and Means favorably reports H.J. Res. 51 because the Members support the Administration's policy of engagement and normalization of relations with Vietnam. In particular, the Committee is convinced that this policy is the cornerstone on which the United States will be able to continue cooperation with the Vietnamese government to important U.S. objectives, including the fullest possible accounting of POWs and MIAs in Vietnam. In addition, engagement enables the United States to influence the pace and direction of economic and political reform in Vietnam in a manner that will improve respect for fundamental human rights and promote democratic reforms.

Congressional approval of the BTA would complete the normalization of U.S.-Vietnam economic relations. Furthermore, undoing the progress that engagement with Vietnam has had to date would seriously undermine our bilateral relationship and would inhibit the ability of the United States to influence Vietnam's re-emergence into the community of nations. In recent years, Vietnam has joined the Association of Southeast Asian Nations and the Asia-Pacific Economic Cooperation group. Vietnam has also applied to become a member of the World Trade Organization.

The Committee believes the serious concerns that the United States has about human rights abuses and the need for economic and political reform in Vietnam are best addressed through expanding government and business contacts and the involvement of U.S. citizens in Vietnamese society, making full use of U.S. trade statutes where necessary.

Effective date

The BTA would enter into force and NTR would take effect only after a joint resolution of approval is enacted into law and after an exchange of letters indicating that both countries have approved the agreement.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee in its consideration of House Joint Resolution 51.

MOTION TO REPORT THE RESOLUTION

The joint resolution, H.J. Res. 51, was ordered favorably reported, without amendment, by a voice vote and with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of House Joint Resolution 51, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of House Joint Resolution 51 would reduce customs duty receipts due to lower tariffs imposed on goods from Vietnam.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 2001.

Hon. WILLIAM "BILL" M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 51, a joint resolution approving the extension of nondiscriminatory treatment to the products of the Socialist Republic of Vietnam..

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.J. Res. 51—Approving the extension of nondiscriminatory treatment to the products of the Socialist Republic of Vietnam

Summary: H.J. Res. 51 would approve extension of nondiscriminatory treatment, or Normal Trade Relations (NTR) status, to the Socialist Republic of Vietnam, as recommended by the President on June 8, 2001. CBO expects that enacting the bill would reduce revenues by $33 million in 2002, by $181 million over the 2002–2006 period, and by $416 million over the 2002–2011 period. Since enacting H.J. Res. 51 would affect revenues, pay-as-you-go procedures would apply.

H.J. Res. 51 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.J. Res. 51 is shown in the following table.

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN REVENUES					
Estimated Revenues	−33	−34	−36	−38	−40

Basis of estimate: H.J. Res. 51 would immediately extend NTR to products from Vietnam. Such products currently bear general rates of duty which are significantly higher than the rates applied to products from countries with NTR treatment. Based on information from the Office of the United States Trade Representative (USTR) and from Census Bureau data on imports from Vietnam, CBO estimates that the reduction of tariff rates would reduce revenues by about $33 million in 2002, net of income and payroll tax offsets. This estimate includes the effects of increased imports from Vietnam that would result from the reduced prices of imported products in the United States—reflecting the lower tariff rates—and has been estimated based on the expected substitution between U.S. products and imports from Vietnam. In addition, it is likely that part of the increase in U.S. imports from Vietnam would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half the increase in U.S. imports from Vietnam will displace imports from other countries.

An extension of NTR treatment to products from Vietnam would be subject to annual review. Under the Trade Act of 1974, nondiscriminatory trade relations may not be conferred on a country with a nonmarket economy if that country maintains restrictive emigration policies. The President may waive this prohibition on an annual basis, however, if he certifies that doing so would promote freedom of emigration in that country. Vietnam has received such a waiver on an annual basis since 1998, and CBO assumes that Vietnam would continue to receive such a waiver after enactment of H.J. Res. 51. Based on information from the USTR and the Census Bureau, CBO estimates enacting the legislation would reduce revenues by $181 million over the 2002–2006 period, and by $416 million over the 2002–2011 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act set up procedures for legislation affecting receipts or direct spending. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in receipts	0	−33	−34	−36	−38	−40	−42	−44	−47	−49	−52
Changes in outlays	Not applicable										

Intergovernmental and private sector impact: H.J. Res. 51 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Erin Whitaker. Impact on State, Local, and Tribal Governments: Scott Masters. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee believes, based on information from the Administration, that approving the U.S.-Vietnam Bilateral Trade Agreement and extending nondiscriminatory treatment to the products of Vietnam by enacting House Joint Resolution 51 would promote progress on important U.S. political, economic, and security objectives with respect to Vietnam.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *").

VI. ADDITIONAL VIEWS

The bilateral trade agreement that the United States signed with Vietnam in July 2000 represents a milestone in U.S.-Vietnam relations. The agreement builds a foundation for a strong commercial relationship with Vietnam and promotes U.S. security and diplomatic interests. The agreement is the most comprehensive agreement ever signed with a communist nation. Vietnam has agreed to provide most favored nation and national treatment to U.S. goods, services, and investments; comply with standards of intellectual property protection that in some cases exceed the obligations established by the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights; and implement extensive measures to increase transparency in its laws, regulations, and administrative procedures. These commitments will help increase opportunities for workers, businesses and farmers in both countries, and pave the way for changes in the Vietnamese economy and in Vietnamese society as a whole. For these reasons, we support H.J. Res. 51 and the approval of the U.S.-Vietnam bilateral trade agreement.

While we believe that the U.S.-Vietnam bilateral trade agreement represents an important step toward building a strong economic relationship between our two countries, the agreement does not include provisions addressing labor conditions in Vietnam. As noted by the U.S. State Department in its annual human rights report, Vietnam's record of enforcing internationally recognized core labor standards has been poor. The Government of Vietnam continues to deny citizens the right of association, allow forced labor in juvenile detention camps and re-education/detention camps, and inadequately enforce its child labor and worker safety laws. The Memorandum of Understanding (MOU) that President Clinton signed with Vietnam in December 2000 pledging that the United States would provide technical assistance and work with Vietnam to improve its labor conditions was a step forward. However, the MOU does not require Vietnam to take specific steps to improve enforcement of existing laws and regulations.

We are disappointed that the issue of labor conditions in Vietnam has not been more fully addressed and urge the Administration to take action as soon as possible. In particular, we are disappointed with the unwillingness of the Administration to pursue the inclusion of a provision providing positive incentives for improvements in labor conditions in a future textile and apparel agreement with Vietnam, similar to the one negotiated with Cambodia. We recognize that there have been some problems with the implementation of the Cambodian agreement, including, for example, a lack of specificity as to what steps Cambodia is required to take to obtain an increase in quota and as to allowances for partial quota increases. That said, we believe these problems can and should be addressed, both in terms of renewal of the Cambodia agreement later this year and in a textile and apparel agreement with Vietnam. Toward that end, we will be suggesting a set of proposed changes to the Cambodia agreement and its implementation, with an eye toward applying these changes to an agreement with Vietnam as well. If the United States fails to enter into a textile and apparel agreement with Vietnam that is similar to the one negotiated with Cambodia, Vietnam could become a preferred location for production relative to Cambodia—for the wrong reasons. The United States should not ignore this opportunity to advance the issue of labor standards in Vietnam at the same time as we work to strengthen economic relations between the two countries.

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JERRY KLECZKA.
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